

# EXHIBIT D

### **Declaration of Krista Berend**

Krista Berend makes the following declaration pursuant to 28 U.S.C. § 1746:

1. My name is Krista Berend (*nee* Smith) and I am fully competent to make this declaration. Unless otherwise indicated, the facts are within my personal knowledge.

2. I am employed at the Texas A&M University System's Office of Marketing and Communications as Director of Marketing and Communications. In 2014, my title was Communications Coordinator, Division of Marketing and Communications at Texas A&M University..

3. In January 2014, I was asked to work on a social media project where the goal was to educate the public about Texas A&M's 12<sup>th</sup> Man tradition and its origins. The project was supervised by Shane Hinckley, then interim Vice President, Marketing Division, and by Jason Cook, Senior Associate Athletics Director. This particular project involved a social media campaign to take place during the NFC Championship game set for Sunday, January 19, 2014. I was instructed to work with Matt Callaway, who was working in A&M's Athletics Department. The idea was that during that game we would send out alternating tweets referring to A&M's 12<sup>th</sup> Man tradition from both the University's institutional social media account and the Athletics Department's account.

4. I sent a tentative plan to Matt Callaway on Thursday, January 16, 2014, with proposed tweets to come from the University's Communication Division and invited him to add tweets from the Athletics Department. Mr. Callaway responded by saying he would go over the plan with Jason Cook and get back to me. The next morning, Mr. Callaway sent me his edits to the plan, which included this proposed tweet:

4p.m. Athletics tweet: Since 1922 the #12Man has made Aggieland his home [photo ekinggill.jpg attached and link to story posted aggieathletics.com, story is being final edited this am, I'll copy to you this afternoon]

5. I do not recall exactly when I first saw the 12<sup>th</sup> Man story, but I believe I didn't see it until I saw the series of tweets from the Athletic Department during that Sunday's social media campaign.

5. I had no contact with Brad Marquardt concerning the 12<sup>th</sup> Man story. He was not working on that social media campaign at all.

6. Part of my job at the time was to compile and put together published stories for the newsletter *TAMU Times*. On Tuesday, January 21, 2014, after that weekend's social media campaign, I sent an email to the following individuals in my department: Diane McDonald, Kim Miller, Lane Stephenson and Shane Hinckley. My email asked that they pick a lead story from a list of feature stories. One of those stories was: "The original 12<sup>th</sup> Man (Athletics)." Shane Hinckley said the original 12<sup>th</sup> Man story needed to be the lead story.

7. Following Mr. Hinckley's direction, I linked the 12<sup>th</sup> Man story that was posted on the Athletics Department website to our January 21, 2014, issue of the *TAMU Times*. I drafted a lead in to that story that stated:

**The Original 12<sup>th</sup> Man**

E. King Gill never led Texas A&M to a national championship, but because of one simple act in Dallas in 1922, he became the most revered Aggie of them all: the 12<sup>th</sup> Man. (more ....)

That introduction was approved by Lane Stephenson, who was the Director of our division's News & Information Services.

8. Before the publication of the January 21, 2014, issue of *TAMU Times*, I had no discussions with anyone about whether that link to the story on the Athletics Department website required permission from the author or anyone else.

9. The next day, on January 22, 2014, I was told that the 12<sup>th</sup> Man story had been removed from the Athletics Department website, which effectively removed the story from the *TAMU Times*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed <sup>Sept. 5</sup> ~~August 5~~, 2023.

  
Krista Berend